

Fresno, California

February 2, 2012

The City Council met in regular session at the hour of 8:30 a.m. in the Council Chamber, City Hall, on the day above written.

Present:

Andreas Borgeas	Councilmember
Lee Brand	Councilmember
Sal Quintero	Councilmember
Larry Westerlund	Councilmember
Blong Xiong	Acting Council President
Clinton Olivier	Council President

Absent: Oliver Baines III Councilmember (out of town)

Bruce Rudd, Assistant City Manager
Jim Sanchez, City Attorney
Yvonne Spence, City Clerk
Yolanda Salazar, Assistant City Clerk

Pastor Eli gave the invocation and President Olivier led the Pledge of Allegiance.

PRESENTATION OF THE SPCA PET OF THE MONTH – COUNCILMEMBER QUINTERO

Presented.

PRESENTATION OF P.R.I.D.E. TEAM CERTIFICATES FOR THE WINTER QUARTER

Employees honored were: Mark Davis of the Airports Department; Todd Stermer of the City Attorney's Office; Gregory Barfield of the City Clerk/City Council/Mayor Offices; Caroline Hyder of the DARM Department; Rae Duke of the Finance Department; Anthony Vasconcellos and Richard Willard of the Fire Department; Steven Frazier, Elois Jackson and Rick Markus of Fresno Area Express (FAX); Raj Nagra of the Information Services Department; Jess Ramirez and Lindsey Miller of the PARCS Department; Steve Del Rio of the Personnel Services Department; Christine Grey, Steve Meyers, Roland Rico and Troy Wise of the Police Department; Ancy Xiong, Cecil Molina, Alex Ortiz and Joe Arroyo of the Public Utilities Department; and Randall Morrison, Christie Kelly and Dan Turner of the Public Works Department. A reception was held immediately following the presentation.

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RECESS – 9:13 A.M. – 9:28 A.M.

APPROVE COUNCIL MINUTES OF JANUARY 26, 2012:

On motion of Councilmember Westerlund, seconded by Councilmember Brand, duly carried, RESOLVED, the minutes of January 26, 2012, approved as amended by Councilmember Westerlund, relative to Item 9:00 a.m. "B", Page 159-20, 1st paragraph, amending the 2nd sentence to read: "...Councilmember Westerlund *stating the housing starts that paid the impact fee in FY11 came to \$1.6 million and (with confirmation from ACM Rudd) stated the annual debt payment was \$2.2 million and he did not see how the city could go further in the hole, and added housing activity was needed and expanded further.*"

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COUNCIL MEMBER REPORTS AND COMMENTS:

Councilmember Borgeas spoke at length to a \$59 million debt that the Redevelopment Agency owes the city of Fresno, to legislation that wipes out that debt, to how a large portion of that money would be repayment to the city's general fund and could be used for very serious purposes if the city were to receive it, to the need for the city to fight for that money and possibly initiate suit again, and to his request to the city attorney to investigate whether the city of Cerritos should be the only city filing suit against California trying to recoup debt that is owed **(2 – 0)**, with City Attorney Sanchez and Councilmember Westerlund responding and addressing issues. Councilmember Westerlund added there was more than \$59 million but there were parts of the records that were not clear, and stated the obligations submitted to the state were clear and were for the \$59 million. Councilmember Borgeas expanded further on the issue, reiterated this was something worth fighting for, and recommended the city provide a letter of support for the legislation, or an accompanying brief adding Fresno to the list, and stressed he could not imagine how the state could come in and unilaterally say transactional debt no longer exists and ask the city of Fresno to eat a \$59 million loan. (**Note - Councilmember Borgeas gave direction to staff after ACM Rudd's upcoming comments).

Councilmember Xiong **(1)** questioned if the city has made a decision on whether or not to pay the \$1,200 Sister City fee, with ACM Rudd stating he would look into the matter and report back; **(2)** also spoke to the debt the redevelopment agency owes the city stating he wholeheartedly agreed with Councilmember Borgeas, and questioned what chance the city had of receiving that money, with Councilmember Westerlund responding and explaining at length; and **(3)** spoke to the Oversight Committee for the redevelopment agency and presented questions on the selection process and appointees, with Councilmember Westerlund and ACM Rudd responding. Councilmember Xiong stated Council should be engaged in the process to make sure the city's interest is known and suggested the matter be placed on a future agenda for discussion, with brief discussion ensuing.

ACM Rudd spoke to comments made about budget needs and money the redevelopment agency owes to the city, cautioned about creating an expectation that there was now a newfound revenue source, and stated staff would work with the city attorney's office on the issue but stated he did not foresee dialing in a number as a revenue assumption for the upcoming budget year and added that matter would be tied up in the courts for awhile. **Councilmember Borgeas stated that was an important message to all and directed the city attorney's office to look into the Cerritos case in terms of (1) whether any relevant redevelopment agencies associated with the cities that are initiating suit against California were co-parties, and (2) if anyone has ever jointly sued their own redevelopment agency as well as the state.

Councilmember Quintero **(1)** acknowledged Ellie Bluestein in attendance stating she was one of Fresno's legends and has always served as Fresno's conscience in one way or another; and **(2)** advised his office would be sending in a request to code enforcement to address the issue of street vendors along the Butler, Kings Canyon and Tulare corridors, and stated he has received complaints from licensed businesses expressing concern with the impact/loss to their business, especially with Valentine's Day coming up.

Continuing from prior comments Councilmember Westerlund added the issue of redevelopment agency debt was a \$4 billion statewide problem and a result of requirements that were put in place for cities and redevelopment agencies to operate.

APPROVE AGENDA:

(10:15 A.M.) SPECIAL MEETING OF THE FRESNO REVITALIZATION CORPORATION:

APPROVE BOARD MINUTES OF JANUARY 26, 2012, 1:30 P.M. AND SPECIAL MEETING MINUTES OF JANUARY 26, 2012, 1:30 P.M.

City Clerk Spence advised the title should read: "Approve Board minutes of January 26, 2012, 11:00 a.m., and Special Meeting minutes ...etc". Per staff's written notice in the packet, the Board meeting minutes were removed from the agenda.

On motion of Councilmember Xiong, seconded by Councilmember Westerlund, duly carried, **RESOLVED**, the **AGENDA** hereby approved, as amended, by the following vote:

Ayes : Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes : None
Absent : Baines

SCHEDULED COMMUNICATION:

APPEARANCE BY RAY ENSHER TO PRESENT AND EXPLAIN “THE STUDENTS GUIDE TO POLICE PRACTICES”

Appearance made with Mr. Ensher and Rebecca Rangel presenting the booklets, published in English and Spanish, to Council, thanking the California Endowment for the funds to produce the book, and expanding on the purpose of the book. Councilmember Westerlund left the meeting at 10:05 a.m. during comments.

ADOPT CONSENT CALENDAR:

(1-A) ACTIONS RELATING TO A BIKEWAY EASEMENT ON THE NORTH SIDE OF W. HERNDON AVENUE EAST OF N. MARKS AVENUE

#1 ADOPT A FINDING OF CATEGORICAL EXEMPTION PER STAFF DETERMINATION PURSUANT TO CEQA GUIDELINES, E.A. NO. C-11-117

#2 RESOLUTION NO. 2012-14 – ORDERING THE SUMMARY VACATION OF A PORTION OF A BIKEWAY EASEMENT ON THE NORTH SIDE OF W. HERNDON WEST OF N. MARKS AVENUE

(1-B) APPROVE A WAIVER OF THE ATTORNEY-CLIENT PRIVILEGE REGARDING LEGAL OPINION ON CITY MANAGER HOLDING JOINT POSITION OF BOARD MEMBER FOR RETIREMENT BOARD AND CITY MANAGER

(1-C) BILL NO. B-3 – ORDINANCE NO. 2012-4 - AMENDING SECTIONS OF THE FRESNO MUNICIPAL CODE RELATING TO SERVICE CONNECTED DEATHS OCCURRING DURING ACTIVE PARTICIPATION IN THE DEFERRED RETIREMENT OPTION PROGRAM (“DROP”) FOR THE CITY’S FIRE & POLICE RETIREMENT SYSTEM AND EMPLOYEES RETIREMENT SYSTEM

(1-D) BILL NO. B-4 – ORDINANCE NO. 2012-5 - AMENDING SECTIONS OF THE FRESNO MUNICIPAL CODE RELATING TO RETIREE REINSTATEMENT TO CITY EMPLOYMENT

On motion of Councilmember Xiong, seconded by Councilmember Quintero, duly carried, RESOLVED, the above entitled **CONSENT CALENDAR** hereby adopted, by the following vote:

Ayes : Borgeas, Brand, Quintero, Xiong, Olivier
Noes : None
Absent : Baines, Westerlund

(9:00 a.m. ‘A’) RESOLUTION NO. 2012-15 – INTENT TO ESTABLISH A SPECIAL TAX DISTRICT (COMMUNITY FACILITIES DISTRICT NO. 16) AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX FOR MAINTENANCE OF CERTAIN PUBLIC IMPROVEMENTS ASSOCIATED WITH THE UNIVERSALLY ACCESSIBLE PARK, AND SETTING THE REQUIRED PUBLIC HEARING FOR FEBRUARY 16, 2012, AT 2:00 P.M.

Councilmember Westerlund returned to the meeting at 10:07 a.m. City Engineer Mozier reviewed the issue and recommended approval, all as contained in the staff report as submitted.

Speaking in support of the issue and the Universally Accessible Park were Bob Hand, Executive Director of Resources for Independence Central Valley, 3008 N. Fresno Street; and Tim Curley, Director of Community and Government Relations at Children’s Hospital.

ACM Rudd stated this was a unique model -- a hybrid of both a homeowner's association and a community facilities district (CFD) -- and the private sector would do the fundraising/managing/programming/on-going maintenance of this facility and the public and private sectors would directly decide how and where the dollars are best allocated, expanding throughout.

Councilmember Xiong added the money from the CFD would be targeted for maintenance of the facility and further explained, commented further on the issue and expressed his support, and commended the partners across the board and staff and made a motion to adopt the resolution, which motion was seconded by President Olivier.

Councilmember Westerlund presented comments and questions relative to his appreciation for the amount of work staff put into this, support for the concept, structure/execution of the CFD, **(3 – 0)** outreach with residents, the need for more than majority support/need for 60%-70% support/need to wage a full-blown campaign, number of large developments proposed for the area, number of existing occupied dwellings, if this was a brand new district, suggestion to call the district UAP District No. 1 for *park* clarity and not a *community* district, need to consider an oversight board to make sure money is spent appropriately and only for this park to gain resident's support, how the annual operating cost was arrived at, the 3% annual adjustment, if separate charges could be levied for heavy park use by groups such as school districts, and his hope for success, with Councilmember Xiong, Mr. Mozier, City Attorney Sanchez and Mr. Rudd responding throughout. Councilmember Borgeas presented questions and comments relative to process, if approval could be obtained by the community/homeowners before Council approval, if the process outlined had to be followed, formula to determine victory, this model being the result of the economic downfall/assumption that this is a temporary fix/the city having a responsibility to parks and the community when the economy returns, concern with the city divesting itself from a particular service provided in the past, and opposition to any plan for the city to divest itself from providing this service forever ("getting out of the game"), with Mr. Rudd, Mr. Sanchez and Councilmembers Xiong and Westerlund responding and commenting further. Councilmember Brand stated this was a good idea and he was very supportive of trying this.

On motion of Councilmember Xiong, seconded by President Olivier, duly carried, RESOLVED, the above entitled Resolution No. 2012-15 hereby adopted, by the following vote:

Ayes	:	Brand, Quintero, Westerlund, Xiong, Olivier
Noes	:	Borgeas
Absent	:	Baines

RECESS – 11:00 A.M. – 11:09 A.M.

(11:00 A.M.) PROCLAMATION OF “REBECCA E. KLISCH DAY” – MAYOR AND CITY COUNCIL

The proclamation was read and presented, with comments/presentations/slide show by Mayor Swearengen, ACM Rudd, Deputy Police Chief Farmer **(4 – 0)**, Deputy Fire Chief Despain, Council President Olivier and the entire council including former Councilmember Dages. A reception was held immediately following.

LUNCH RECESS – 11:44 A.M. – 1:30 P.M.

(9:00 a.m. ‘B’) RESOLUTION NO. 2012-16 - APPROVING THE REALLOCATION OF \$3,000,000 FROM THE PROPERTY/LIABILITY SELF-INSURANCE FUND CONTINGENCY TO FUND LIABILITY REFUNDS AND CLAIMS AND LIABILITY OUTSIDE LEGAL SERVICES

Senior Risk Analyst Trost reviewed the issue and recommended approval, all as contained in the staff report as submitted, and along with City Attorney Sanchez responded to questions of Councilmember Brand relative to the \$3 million being reallocated, if the reserve fund will now have to be refunded for next year, amount that will be budgeted for FY13, the separate fund and amount for outside legal services, if the cost to do business was going up, court trials and costs/what lawsuits were on the horizon, and if this allocation will cover cases/claims/services through the end of this fiscal year. A motion and second was made to adopt the resolution. Mr. Trost responded briefly to questions of Councilmember Westerlund relative to a recent arbitration case the city lost and funding source for the associated \$287,000 cost.

On motion of Councilmember Brand, seconded by President Olivier, duly carried, RESOLVED, the above entitled Resolution No. 2012-16 hereby adopted, by the following vote:

Ayes : Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes : None
Absent : Baines

(9:15 a.m. #1) BILL NO. B-6 - AMENDING THE FRESNO MUNICIPAL CODE TO ESTABLISH A CITY COUNCIL APPEAL AND RESCISSION PROCESS RELATING TO THE DESIGNATION OF "HERITAGE PROPERTIES" AND FURTHER CLARIFY "HERITAGE PROPERTY" DESIGNATION STATUS – COUNCILMEMBER WESTERLUND

Councilmember Westerlund gave an in-depth overview of the issue, all as contained in his report to council as submitted, and made a motion to introduce the Ordinance Bill.

On motion of Councilmember Westerlund, seconded by Councilmember Brand, duly carried, RESOLVED, the above entitled Bill No. B-6 introduced before the City Council and laid over, by the following vote:

Ayes : Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes : None
Absent : Baines

(10:00 A.M.) HEARING TO CONSIDER THE VACATION OF PORTIONS OF "F" AND "G" STREETS
#1 ADOPT THE ADDENDUM TO EA-10-085, A FINDING OF CONFORMITY WITH THE MEIR FOR E.A. NO. EA-10-085
#2 ADOPT A FINDING OF CONFORMITY WITH THE MEIR FOR E.A. NO. EA-10-085 AS AMENDED BY THE ADDENDUM
#3 RESOLUTION NO. 2012-17 - ORDERING THE VACATION OF PORTIONS OF "F" AND "G" STREETS NORTHWEST OF SANTA CLARA, AND A PORTION OF SANTA CLARA STREET BETWEEN "F" AND "G" STREETS

President Olivier announced the time had arrived to consider the issue and opened the hearing.

City Engineer Mozier reviewed the issue and recommended approval, all as contained in the staff report as submitted.

Upon call, no one wished to be heard and President Olivier closed the hearing.

On motion of President Olivier, seconded by Councilmember Westerlund, duly carried, RESOLVED, the above entitled Addendum, Finding of Conformity, and Resolution No. 2012-17 hereby adopted, by the following vote:

Ayes : Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes : None
Absent : Baines

The City Council recessed at 1:48 p.m. and **as subsequently clarified by former RDA Vice Chair Westerlund (next page) the Council convened in joint session with the City of Fresno as the Successor Agency to the Redevelopment Agency.

(9:15 a.m. #2) JOINT MEETING WITH THE REDEVELOPMENT AGENCY:

APPROVE AGENCY MINUTES OF JANUARY 26, 2012

On motion of Acting Chair Westerlund, seconded by Member Olivier, duly carried, RESOLVED, the Redevelopment Agency minutes of January 26, 2012, approved as submitted.

(‘A’) JOINT CITY COUNCIL AND SUCCESSOR AGENCY RESOLUTION NO. 2012-18/SA-1 – DESIGNATING POSITIONS WHICH SHALL BE SUBJECT TO THE CONFLICT OF INTEREST CODE AND DEFINING CATEGORIES OF DISCLOSURE FOR SUCH POSITIONS

(5 – 0) Acting Chair Westerlund noted this was an annual action to comply with state law, and City Attorney Sanchez added the 2011 date in the resolution would be corrected to 2012.

On motion of President/Member Olivier, seconded by Councilmember/Member Brand, duly carried, RESOLVED, the above entitled Joint Council/Successor Agency Resolution No. 2012-18/SA-1 hereby adopted, by the following vote:

Ayes : Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes : None
Absent : Baines

The meeting was adjourned at 1:50 p.m. and the City Council reconvened in regular session.

CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL:

(‘A’) ANTICIPATED LITIGATION/SIGNIFICANT EXPOSURE TO LITIGATION – CASE NAME: PACIFIC GAS AND ELECTRIC (PG&E) COMPANY V. CITY OF FRESNO

The City Council met in closed session in Room 2125 at the hour of 1:51 p.m. to consider the above matter and recessed thereafter.

RECESS – 2:00 P.M. – 2:12 P.M.

(9:15 a.m. #2) CLARIFICATION - JOINT MEETING WITH THE REDEVELOPMENT AGENCY:

(‘A’) JOINT CITY COUNCIL AND SUCCESSOR AGENCY RESOLUTION NO. 2012-18/SA-1 – DESIGNATING POSITIONS WHICH SHALL BE SUBJECT TO THE CONFLICT OF INTEREST CODE AND DEFINING CATEGORIES OF DISCLOSURE FOR SUCH POSITIONS – CONTINUED FROM EARLIER

******At this point Councilmember Westerlund clarified for the record the meeting was between the City Council and the City of Fresno as the Successor Agency to the Redevelopment Agency, and action was taken by Council and the Successor Agency. City Attorney Sanchez added as a matter of law, any actions that involve the Redevelopment Agency as of February 1st would now be by the City of Fresno as the Successor Agency to the RDA.

The City Council recessed at 2:15 p.m. and convened in special session as the Fresno Revitalization Corporation.

(10:15 A.M.) SPECIAL MEETING OF THE FRESNO REVITALIZATION CORPORATION (FRC):

APPROVE SPECIAL MEETING MINUTES OF JANUARY 26, 2012, 1:30 P.M.

On motion of Member Westerlund, seconded by Member Xiong, duly carried, RESOLVED, the Special Meeting minutes of January 26, 2012, approved as submitted.

(‘A’) FRC RESOLUTION NO. 2 – REMOVING THE CORPORATION’S CHAIRMAN, VICE-CHAIRMAN, SECRETARY, AND CHIEF FINANCIAL OFFICER

#1 ELECTION OF CHAIRMAN, VICE-CHAIRMAN, SECRETARY, AND CHIEF FINANCIAL OFFICER

Member Westerlund made a motion to adopt the Resolution removing the officers, which motion was seconded by Member Xiong.

Mayor Chief of Staff White stated Mayor Swearengin wanted to be present for this meeting but had not made it back from the installation of the new Catholic Bishop, and added she looked forward to serving with members in her capacity of a board member.

On motion of Member Westerlund, seconded by Member Xiong, duly carried, RESOLVED, the above entitled Resolution No. 2 hereby adopted, by the following vote:

Ayes	:	Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes	:	None
Absent	:	Baines, Swearengin

#1 ELECTION OF FRC CHAIRMAN, VICE-CHAIRMAN, SECRETARY, AND CHIEF FINANCIAL OFFICER

On motion of Member Brand, seconded by Member Borgeas, duly carried, RESOLVED, Member Baines elected Chairman, Member Westerlund elected Vice-Chairman, City Clerk Spence elected Secretary, and Debra Barletta elected Chief Financial Officer of the FRC, by the following vote:

Ayes	:	Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes	:	None
Absent	:	Baines, Swearengin

(‘B’) CONFIRMING THE APPOINTMENT OF THE FRESNO REVITALIZATION CORPORATION EXECUTIVE DIRECTOR/PRESIDENT

On motion of Vice Chair Westerlund, seconded by Member Brand, duly carried, RESOLVED, the appointment of Marlene Murphey as the FRC Executive Director/President hereby confirmed, by the following vote:

Ayes	:	Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes	:	None
Absent	:	Baines, Swearengin

(‘D’) ADOPT THE REGULAR MEETING SCHEDULE OF THE BOARD OF THE FRESNO REVITALIZATION CORPORATION

Per the Bylaws, Vice Chair Westerlund read into the record that the FRC shall hold regular meetings as necessary coinciding with the regular meetings of the Fresno City Council, also to be held in the Council Chambers.

On motion of Vice Chair Westerlund, seconded by Member Olivier, duly carried, RESOLVED, the FRC to hold regular meetings as necessary, coinciding with the regular meetings of the Fresno City Council, in the Council Chambers, by the following vote:

Ayes	:	Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes	:	None
Absent	:	Baines, Swearengin

(‘C’) FRC RESOLUTION NO. 3 – RATIFYING ALL PRIOR ACTIONS OF THE CHAIRMAN, VICE-CHAIRMAN, EXECUTIVE DIRECTOR/PRESIDENT, SECRETARY, AND CHIEF FINANCIAL OFFICER TAKEN ON BEHALF OF THE FRESNO REVITALIZATION CORPORATION SINCE JANUARY 26, 2012, RELATED TO THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY AS THE SUCCESSOR AGENCY AND THE FRESNO REVITALIZATION CORPORATION

Vice Chair Westerlund introduced the item and a motion and second was made to adopt the Resolution.

On motion of Member Olivier, seconded by Member Xiong, duly carried, RESOLVED, the above entitled FRC Resolution No. 3 hereby adopted, by the following vote:

Ayes : Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes : None
Absent : Baines, Swearengin

Member Xiong referenced comments made earlier under *COUNCIL REPORTS AND COMMENTS* and requested an item be brought back for discussion and input on the Oversight Committee selection process and appointments. Vice Chair Westerlund stated he would ask staff to schedule an item for discussion on potential litigation regarding the redevelopment agency debt, with City Attorney Sanchez stating that matter would be scheduled for hearing by the City of Fresno and the City as the Successor Agency.

The special meeting of the FRC was adjourned at 2:24 p.m. and the City Council reconvened in regular session.

UNSCHEDULED COMMUNICATIONS:

Upon call, no one wished to be heard.

ADJOURNMENT

There being no further business to bring before the City Council, the hour of 2:24 p.m. having arrived and hearing no objection, President Olivier declared the meeting adjourned.

Approved on the _____ 9th _____ day of _____ February _____, 2012.

_____/s/_____
Clinton Olivier, Council President

ATTEST: _____/s/_____
Yolanda Salazar, Assistant City Clerk